



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM021May24

In the matter between:

African Bank Limited

Primary Acquiring Firm

And

**The Commercial Property Finance and Capital
Equipment Finance Businesses of Sasfin Bank
Limited**

Primary Target Firms

Panel	:	L Mncube (Presiding Member)
	:	I Valodia (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	26 July 2024
Order issued on	:	26 July 2024
Reasons issued on	:	26 August 2024

REASONS FOR DECISION

- [1] On 26 July 2024, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby African Bank Limited (“**African Bank**”) intends to acquire the commercial property finance (“**CPF**”) and capital equipment finance (“**CEF**”) businesses of Sasfin Bank Limited (“**Sasfin**”), including the loan books, contracts, goodwill, intellectual property, business claims and the business records of CPF and CEF (“**target business**”).

The parties and their activities

- [2] The primary acquiring firm is African Bank. African Bank is wholly controlled by African Bank Holdings Limited (“**African Bank Holdings**”). African Bank

Holdings is in turn controlled by the South African Reserve Bank (“**SARB**”)¹. The remaining shares in African Bank are held by the “**Consortium Banks**”², the Government Employees Pension Fund (the “**GEPF**”)³.

[3] African Bank controls Grindrod Financial Holdings Limited (“**Grindrod Holdings**”), which in turn controls Grindrod Bank Limited (“**Grindrod Bank**”). African Bank, its subsidiaries and all its controlling firms are collectively referred to as the “**Acquiring Group**”.

[4] The core activities of the ultimately controlling shareholder of the Acquiring Group, the SARB, is to operate as the regulator for the banking sector. The Acquiring Group’s banking activities are conducted by African Bank.

[5] African Bank’s current banking activities are focused on consumer-facing retail banking, with a particular strength in unsecured and micro-lending. Through Grindrod Bank (an indirect subsidiary of African Bank), African Bank also offers financial services to commercial clients, including new and matured SMEs.

[6] Of relevance to the proposed merger are activities of African Bank in retail banking and commercial banking. The retail banking activities of African Bank comprise of the following:

6.1. The provision of unsecured lending⁴, transactional banking⁵, retail investments⁶, and credit and life insurance products⁷.

[7] The Commercial banking activities of African Bank comprise of the following:

¹ As to 50%. SARB also controls South African Mint Company (RF) Proprietary Limited (“**SA Mint**”), South African Bank Note Company (RF) Proprietary Limited (“**SA Bank Note**”) and Corporation for Public Deposits. SA Mint in turn controls Prestige Bullion (RF) Proprietary Limited (“**Prestige Bullion**”).

² FirstRand Bank Limited (“**FirstRand**”) (6.55%), The Standard Bank of South Africa Limited (“**SBSA**”) (5.95%); Absa Trading and Investments Solutions Proprietary Limited (“**ABSA**”) (4.95%); Nedbank Limited (“**Nedbank**”) (4.10%); Investec Bank Limited (“**Investec**”) (2.45%); and Capitec Bank Limited (“**Capitec**”) (1.00%).

³ As to 25%.

⁴ Personal loans, consolidation loans and credit cards.

⁵ Including online banking and overdrafts.

⁶ Fixed deposits, notice deposits and group saving.

⁷ Including funeral plan cover.

7.1. Treasury (raising deposits in the market), in particular, call deposits, fixed deposits and notice deposits and capital markets through the Johannesburg Stock Exchange approved domestic medium term note programme; Platform banking/Alliance banking partnerships. Corporate, Investment and SME Banking; and Property Lending in particular, providing vanilla finance, mezzanine finance and blended facilities.

[8] The primary target firms are the CPF and CEF businesses of Sasfin. The primary target firms are controlled by Sasfin, which is in turn wholly controlled by Sasfin Holdings Limited ("**Sasfin Holdings**"). Sasfin Holdings is a public company whose shares are widely held and traded on the Johannesburg Stock Exchange.

[9] The CPF business of Sasfin provides tailor-made finance products to customers that are seeking to develop small to medium commercial residential property developments. The CEF business of Sasfin provides asset-backed finance, primarily involving industrial assets and equipment.

Transaction

[10] The proposed merger involves African Bank's acquisition of the CPF and CEF businesses of Sasfin, including the loan books, contracts, goodwill, intellectual property, business claims and the business records as defined in the Sale of CPF Business Agreement and the Sale of CEF Business.

[11] Post-merger, the CEF and CPF businesses will be controlled by African Bank.

Jurisdiction

[12] The proposed merger constitutes a transaction envisaged in section 54 of the Banks Act 94 of 1990 ("Banks Act"). As such, in terms of section 18(2) of the Competition Act 89 of 1998, as amended ("the Act"), the Tribunal cannot make an order in relation to such a transaction if the Minister of Finance ("The Minister") has issued a notice indicating that it falls within the ambit of section

54 of the Banks Act and that it would be in the public interest for such a merger to be subject to the jurisdiction of the Banks Act, and not the Competition Act.

[13] The Commission notified the Minister of the proposed merger, as required in terms of Rule 36 of the Commission Rules for the Conduct of its Proceedings. At the time the Commission referred the proposed merger to the Tribunal, the Minister had not yet asserted his jurisdiction in the terms of section 18(2)(b) of the Act.

[14] On 16 July 2024, we sent a letter to the Minister, informing him that the proposed merger is currently before the Tribunal. On 26 July 2024, we issued an order approving the proposed merger.

Competition Assessment

[15] The proposed merger gives rise to a horizontal overlap between the merger parties' activities. This overlap arises in the provision of commercial property finance and the provision of asset-backed finance.

[16] When assessing the effect of the merger, the Commission considered: (i) the national market for the provision of commercial property finance; and (ii) national market for the provision of asset-backed finance. We did not receive any information to suggest that we should depart from this way of framing the markets. We therefore assessed the effects of the proposed merger on the same basis as the Commission.

16.1. In assessing the effect of the proposed merger on the national market for the provision of commercial property finance, we noted that the merged entity will have a combined post-merger market share of approximately less 10%, with a market share accretion of less than 5%. The merged entity will continue to be constrained by larger market participants such as Nedbank, Investec, SBSA, ABSA, FirstRand, and Capitec, amongst others. In light of the above evidence on the combined market shares of merging parties being less than 10%, we are of the view that the proposed

merger is unlikely to substantially prevent or lessen competition in this market.

16.2. In assessing the effect of the proposed merger on the national market for the provision of asset-backed finance, we received no market share information and relied on market participants' information submitted to the Commission concerning market dynamics. With regards to the national market for the provision of asset-backed finance, the merged entity will continue to face competition from several players such as ABSA, FirstRand, SBSA, Nedbank , Investec.

[17] In addition, no third-party raised concerns regarding the proposed merger. Accordingly, we are of the view that the proposed merger is unlikely to raise competition issues in any market/s in which the merger parties are involved.

Public Interest

Effect on employment

[18] The merger parties submitted that the proposed merger will not have adverse effect on employment in South Africa. In terms of section 197 of the Labour Relations Act⁸, the employees of target businesses will be transferred to the Acquiring Group based on the same terms and conditions employment.

[19] The Commission engaged with the employees of the Acquiring Group, represented by the Finance Union, SASBO and Target Firm's employees representatives. There are no concerns raised by SASBO, however, the employee representatives of the target business initially raised concerns, which were addressed by the merger parties by assuring that the proposed merger entails a transfer of business as a going concern. As such, the Commission concluded that the proposed merger does not raise employment concerns.

[20] We concur with the Commission's findings.

⁸ Labour Relations Act No.66 of 1995.

Effect on the spread of ownership

- [21] The Commission assessed the effect of the proposed merger on the spread of ownership, particularly considering the shareholding by historically disadvantaged persons (“HDPs”). It was noted that African Bank has an HDPs shareholding of 26.82%, while the target businesses owned by Sasfin have an HDP shareholding of 21.65%.
- [22] The merger parties clarified that the 26.82% HDPs ownership in African Bank, as indicated in their Broad-Based Economic Empowerment certificate, reflects only the Consortium Banks' shareholding. In comparison, African Bank's HDPs shareholding is higher than that of Sasfin. Consequently, the Commission concluded that no additional measures are necessary. We concur with this assessment.

Other public interest considerations

- [23] We received no evidence or submissions that the proposed merger raises other public interest issues.

Conclusion on the public interest assessment

- [24] No third parties, whether customers or competitors, expressed concerns about this aspect of the proposed merger.
- [25] In light of the above, we are satisfied that the proposed merger does not raise any public interest issues.

Conclusion

- [26] We therefore approve the proposed merger without conditions.



Signed by: Liberty Mncube
Signed at: 2024-08-26 17:23:39 +02:00
Reason: Witnessing Liberty Mncube


Presiding Member
Professor Liberty Mncube

26 August 2024

Date

Professor Imraan Valodia and Advocate Geoff Budlender SC concurring

Tribunal Case Manager:	Sinethemba Mbeki
For the Merger Parties:	Lara Granville and Mmakgabo Mogapi of Cliffe Dekker Hofmeyr Inc with Paul Cleland of Werksmans Attorneys
For the Commission:	Reabetswe Molotsi and Grashum Mutizwa